IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.7473 OF 2005

Shri Vikram Janakraj Ahuja .. ..Applicant
Versus
State of Maharashtra and Ors. .. ..Respondents

Mr.S.P.Kadam for applicant
Mr.R.Y.Mirza, APP for respondents

CORAM : S.C.DHARMADHIKARI,J.

DATE : 18TH NOVEMBER, 2005

P.C.:

1. The application made by the applicant for anticipatory bail is admittedly pending before the Sessions Judge, Mumbai. The applicant has filed this application seeking interim anticipatory bail from this court because in his submission the court below has not granted interim protection and there is an apprehension that he will be arrested and the very purpose of moving the court would not survive.

2. Having perused the present application with the assistance of counsel for both sides, it is clear that this court vide its Order dated 28.10.2005 granted limited

protection till 1st November, 2005. The said order grants liberty to the applicant to approach appropriate Sessions Court for grant of anticipatory bail. The application, in which this order was passed, itself sought limited protection since 72 hours notice of arrest was given by the respondents. That notice was given on the basis of an earlier order passed by this court on 30th September 2005.

3. I am informed that the anticipatory bail application is listed today. The applicant apprehends that if interim protection is not continued till the disposal of the same, very purpose of moving the Sessions Court pursuant to the liberty granted by this Court would be defeated. The learned counsel appearing for the applicant states that the applicant will remain present today when the application for anticipatory bail is being considered by the Sessions Judge and on such other dates to which it may be adjourned and shall also remain present as and when it is taken for consideration.

4. In the light of the aforesaid statement and the order passed by this Court on 28th October, 2005 the applicant is granted protection and he shall not be arrested till the disposal of the anticipatory bail

application bearing No.1409 of 2005 pending before the Sessions Judge, Mumbai. The learned Sessions Judge is directed to dispose of the said application within a period of ten days from the date of receipt of a copy of this order.

5. This order is passed in the light of the statement made by the learned counsel appearing for the applicant before this court. The applicant shall abide by all conditions as are imposed by this court in its order referred to above.

6. In the light of the apprehension expressed in para 9 of this application, the attention of the learned Judge is invited to Section 438 of the Criminal Procedure Code, as amended in the State of Maharashtra. The said provision reads thus -

> "438. Direction for grant of bail to person apprehending arrest -
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> (1) When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to

the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail; and that court may, after taking into consideration, inter alia, the following factors :-

(i) the nature and gravity or seriousness of the accusation as apprehended by the applicant;

(ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a court previously undergone imprisonment for a term in respect of any cognizable offence;

(iii) the likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested, and

(iv) the possibility of the applicant, if granted anticipatory bail, fleeing from

justice.

either reject the application forth with or issue an interim order for the grant of anticipatory bail:

. PROVIDED that where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under sub-section (1), the court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the court may deem fit; and if the court passes any order granting anticipatory bail, such order

shall include inter alia the following conditions, namely :-

(i) that the applicant shall make himself available for interrogation by a police office as and when required;

(ii) that the applicant shall not, directly or indirectly,make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the court or to any police officer;

(iii) that the applicant shall not leave India without the previous permission of the court; and

(iv) such other conditions as may be imposed under sub-section (3) of section 437 as if the bail was granted under that section.

(3) Whether the court grants an interim order under sub-section (1), it shall forthwith cause a notice, being not less than seven days' notice,

together with a copy of such order to be served on the Public Prosecutor and the Commissioner of Police, or as the case may be, the concerned Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the court.

(4) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the court, if on an application made to it by the Public Prosecutor, the court considers such presence necessary in the interest of justice.

(5) On the date indicated in the interim order under sub-section (2), the court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order made under sub-section (1).

Now the said provision is also part and parcel of amended

Code of Criminal Procedure. The Maharashtra amendment specifically states that the Sessions Judge may either reject the application forthwith or issue an interim order for grant of anticipatory bail. The proviso to Section 438(1) is absolutely clear. It is only in the event of this court or the court of session not passing any interim order under this sub-section or rejecting the application for grant of anticipatory bail that it is open to the officer incharge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in the application.

7. Needless to say that when the Court has granted interim protection and directed expeditious disposal of the application for anticipatory bail the applicant cannot be arrested. Even otherwise, the learned Judge is obliged to consider the request of applicants for Interim protection when the Statute specifically permits consideration thereof. Ultimately, the question is of the applicant’s liberty. The provision is enacted to protect the person’s reputation and dignity as well. There cannot be a rigid formula applied to all cases. In deserving cases, it is the duty of the court to grant interim protection. The learned Judge ought to be careful in this

regard. He should not render applications infructuous.

8. The application stands disposed with the above directions.

(S.C.Dharmadhikari, J.)